

RULES  
of the  
CIRCUIT COURT  
for  
CECIL COUNTY,  
MARYLAND  
LAW

## RULES OF THE CIRCUIT COURT FOR CECIL COUNTY.

RULE 1. The Clerk shall attend Court in person, unless he be sick or unavoidably absent, and shall provide sufficient well qualified deputies to assist him in the prompt and proper execution of the duties of his office. He and his deputies shall observe, and make use of, the ordinary and established forms of proceeding in all business in this Court, and shall administer all oaths taken in Court.

RULE 2. The Sheriff shall attend Court in person, unless prevented by sickness, or other sufficient cause. He shall provide a deputy, or deputies, if necessary, and he, or his deputy, shall preserve order in Court. He shall admit no person within the Bar, but the officers of the Court, or such as shall be called on process, or otherwise; or shall have business before the Court, or shall be permitted by the Judge or the Court to come within the Bar.

RULE 3. The Constables of Cecil County shall attend the daily sessions of the Court, unless excused or discharged, and such of them as the Court shall direct shall serve as bailiffs to the Court and juries; and shall assist the Sheriff in preserving order at the Bar, and in all places within the view and hearing of the Court.

RULE 4. The Crier of the Court shall keep every part of the Court room in neat and proper order, and shall attend Court in person, day after day, from the meeting of Court until it adjournment, unless excused by the Court.

RULE 5. The Criminal Docket, in the discretion of the Court, may be called at any time, and Criminal business shall have precedence over all other business.

RULE 6. On the first day of every term, that the Court shall be in session, if practicable, the appearance Docket shall be called over, returns taken, and orders given.

RULE 7. The Trial Docket shall next be called, and cases for trial so marked; on the second call of the Trial Docket, all cases marked Trial, and not ready, shall, in the discretion of the Court, be postponed till all the subsequent trial cases are disposed of, when the postponed cases shall be taken up, in their regular order, and tried or continued, as the Court shall direct, and the costs and charges of the term, up to the time of the postponement, and the intermediate costs and charges, between the postponement and trial, shall be defrayed by the party not ready.

RULE 8. In calling the Trial Docket for the purpose of entering judgments, judgments shall invariably be entered, unless, in support of the motion for a continuance, the Counsel for defendants shall state to the Court that, in his judgment, his Client has just and legal ground of defense.

RULE 9. The Judicial Docket shall be called over on the last day of each and every term, returns taken and orders given.

RULE 10. All Process, criminal and civil, and not otherwise provided for by these Rules, shall be made returnable on the first day of each and every term, and it shall be the duty of the Sheriff to serve said Process, and return the same to the Clerk, by 10 o'clock A. M., on the said first day of the term, and the Clerk shall forthwith enter said return upon the Docket.

RULE 11. Subpoenas for Witnesses to testify in cases on the Civil Trial Docket, and issued before the meeting of the Court, shall be returnable on the first day of each term, at the opening of the Court, and all subpoenas for witnesses, issued during Court, shall be returnable forthwith.

RULE 12. The Subpoena Docket for Witnesses, in causes for trial, shall be called over on the second day of each term, at 10 o'clock A. M.; and witnesses summoned, but failing to attend Court, may be attached, either on the motion of the party for whom they were summoned, or on motion of said party's counsel, and unless the attachment be demanded, at the proper time, no cause shall be continued, because of the absence of a witness not thus regularly attached.

RULE 13. (Repealed, see amendments)

#### RULE 13 and 14

#### AMENDMENTS

September Term, 1879.

Ordered this 17th day of September, 1879--that Rules 13 and 14 of this Court be repealed, and the following substituted in lieu thereof, viz:

Rule 13. The Appeal Docket shall be called over on the first day of each Term and cases thereon shall be disposed of immediately in their numerical order.

Rule 14. All Subpoenas for Witnesses to testify in Appeal Cases, shall be returnable on the first day of each Term, and Witnesses subpoenaed, but not attending at the call of the Appeal Docket may be attached forthwith.

Signed

Jno. M. Robinson,

. Fredk Stump.

RULE 16  
AMENDMENT

Ordered this 9th day of December, 1902, by the Circuit Court for Cecil County that the following to be known as Rule 16 be and the same is hereby passed in lieu and instead of the present Rule 16.

RULE 16. The Rule Day for filing Declarations and Pleadings shall be the third Tuesday in January, third Tuesday in May, third Tuesday in August and third Tuesday in October, and Saturday preceding the first day of each Term.

Signed

William R. Martin

Edwin H. Brown

RULE 14. (Repealed, see amendments) previous page.

RULE 15. All special verdicts, points saved, cases stated, demurrers, motions for new trials and in arrest of judgment, and petitions in Chancery shall be argued and heard after the trial of Jury cases, unless this rule shall be dispensed with by the Court for special reasons.

RULE 16. (Repealed, see amendments) previous page.

RULE 17. All Pleadings shall be in writing and shall be filed by Rule Day, and the Clerk shall enter upon the Docket the date of their being filed.

RULE 18. In all cases where Declarations or other Pleadings are filed by the Rule Day, the Clerk shall immediately lay the Rule on the adverse party to plead, etc.

RULE 19. If the party on whom the Rule shall have imposed the duty to plead by any Rule day, shall not have complied with the said Rule, and no advantage shall be taken of such failure at the ensuing term, if the Rule day was in the recess, or at the same term, if the Rule expired on the second day of the term, it shall be the duty of the Clerk to enter an extension of the Rule to the next Rule day, and under the Rule, as extended, the party shall have the privilege of filing any plea whatever which could have been filed under the original Rule.

RULE 20. Within fifteen days after each Rule day, the Clerk shall make an exact copy of the Pleading filed in every case under the Rule, immediately preceding said Rule day, and shall hand the same, when called for, after the expiration of the said fifteen days, to the opposite parties, or their counsel; and the costs of the aforesaid copies shall be taxed by the Clerk as part of the costs of the suit.

RULE 21. If the Plaintiff or Defendant neglects to declare or plead within the time limited by the Rule of Court, judgment of **Non pros**, or by default, as the case may be shall be given; but the Court, for special causes shown, may allow further time to declare or plead, and on such terms as it may think reasonable.

RULE 22. All judgments on the Trial and Appeal Docket shall take effect from the first day of the Term; judgments on the Appearance Docket shall take effect from the day they are entered.

RULE 23. Every objection to the admissibility of evidence shall be made at the time such evidence is offered, or as soon thereafter as said objection shall become apparent, otherwise the objection shall be treated as waived; and every objection thus made shall be disposed of forthwith, unless the Court shall think fit to suffer the evidence to be offered subject to the objection. The Court, however, reserves to itself the right to exclude illegal or irrelevant testimony even if not objected to by counsel. The Court will ordinarily require that all the evidence intended to be produced by plaintiff or defendant, shall be offered before any prayer is made to the Court for its instructions thereon. But in special cases, after the plaintiff's case shall have been closed, the Court in its discretion may permit the defendant to submit a prayer or prayers, involving the right of the plaintiff to recover, and the extent of such right. After all testimony intended to be produced by plaintiff and defendant shall have been introduced, the Court will expect to be furnished with all the prayers which the parties respectively propose to found thereon. These prayers shall be argued together, unless otherwise directed by the Court. The plaintiff, if he shall have submitted any material proposition, not admitted by the defendant, being entitled to open and conclude on the whole. And the Court, upon the whole case, will give such instructions as may appear requisite to place the cause fully before the Jury. After the Jury shall have been so charged or instructed as contemplated by this rule, no additional prayer will be received, nor additional evidence be given to the Jury, unless by permission of the Court. All points of law brought before the Court shall be stated in writing by the counsel raising said points, unless the writing be dispensed with by the Court.

RULE 24. Motions in arrest of judgment, and for new trials shall be made, and reasons filed, within four days next after the trial, if the Court should continue to sit so long and if it should not, then during the sitting of the Court.

RULE 25. In all cases of Ejectment, the service of the Declaration and notice shall be six days before return day of the term, exclusive of both the day of service and day of return, and the Defendant shall take defense the first term.

RULE 26. No Judgment of Ejectment, or Fiat Executio on Scire Faciasm for want of an appearance being entered, shall be considered as absolute if an appearance shall be entered at any time during the sitting of the Court to which the Ejectment or Scire Facias shall be brought, but no such appearance shall be received at any adjourned Court without a special order for that purpose.

RULE 27. In all Warrants of Resurvey, the Sheriff shall give ten days previous notice to the parties, both Plaintiff and Defendant, or, if they live out of the County, to their respective agents or attorneys, of the time and place of meeting to make such survey, and said Warrant of resurvey shall be executed in such time as that the County Surveyor may be enabled to make out and return to the Clerk's office five Plots, ten days before the sitting of the Court to which said Warrant shall be returnable; and it shall be the duty of the County Surveyor to make said Plots and return them as aforesaid.

RULE 28. Where leave shall be granted to amend or add to any Plot, returned under a former Warrant of Re-survey, the same notice shall be given as on Warrant of Re-Survey, and the same amendment and additions shall be made, and the Plots so altered shall be returned to the Clerk's office ten days before the meeting of the next Court.

RULE 29. If any Cause can continue, be continued after being marked for trial, (or if any Cause that cannot continue without affidavit be continued,) the party applying therefor shall pay the costs of the term.

RULE 30. Where leave shall be granted to issue a Commission to take depositions out of the State in any Cause depending in Court, the party applying for the same shall file his interrogatories with the Clerk, who shall not issue said Commission until he shall have served a copy of said interrogatories, which shall be done immediately after the receipt of the same, on the adverse party or his Counsel, and if said adverse party or his Counsel shall not file their interrogatories within ten days from such service, then said Commission shall be issued according to the leave granted; and in case the Counsel shall not reside at the seat of Justice, then a copy of interrogatories, being inclosed in a letter and put into the mail, addressed to such Counsel at his usual place of residence, shall be considered as a service within the intention of this Rule.

RULE 31. No officer of this Court shall be admitted as Bail in Criminal cases, or received as security for costs in any suit in this Court, except a sufficient sum of money to cover costs be first deposited with him for that purpose.

RULE 32. (In execution of the Act of 1831, Ch. 2900)

After the proceedings shall be filed with the Clerk, the purchaser or purchasers, or, in the event of his, her or their death, the legal representatives of the purchaser shall cause the following notice, or notice of the like substance and effect, to be advertised in at least one newspaper, published in Cecil County, once a week for three successive weeks prior to the sitting of the Court.

### FORM OF NOTICE

A. B. (Plaintiff) : Judgment before E. F., Justice of the Peace,  
vs : for \$\_\_\_\_\_ debt (or damages,) with interest  
C. D. (Defendant) ; from the day of \_\_\_\_\_, till paid, and costs.

The subscriber having purchased the Real Estate of the above named Defendant, (or if more than one Defendant designating the name or names of those, whose Title the Constable professed to sell) at a sale thereof, in virtue of an Execution issued upon the foregoing judgment, made on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ by G. H., Constable, hereby gives notice that he intends to apply to the Judge of the Circuit Court for Cecil County, at its next session to be held in Elkton, on the \_\_\_\_\_ day of \_\_\_\_\_ next, for a confirmation of said sale, when and where the said Defendant (or Defendants) or his (or their) creditors, or any other person or persons claiming an interest in the matters, will have an opportunity of stating their objections, if any they have, why the sale should not be confirmed, and for that purpose are hereby warned to appear. The property purchased by the subscriber consists of (here give the description contained in the Constable's return,) and was struck off for the sum of \$\_\_\_\_\_.

If the Real Estate shall be sold in parcels to different purchasers, they may advertise separately or unite in the same advertisement, setting forth the property purchased by each. If the sale or sales shall be confirmed by the Court, the proceedings shall be recorded at the expense of the purchaser or purchasers. RULE. 33. No Writ of Habere Facias Possessionem will be issued by this Court, under Act of 1825, Chapter 103, unless an affidavit be filed stating that the Debtor, or some person holding under such Debtor, by Title subsequent to the judgment or decree, hath on demand failed or refused to deliver possession of the land sold, upon the filing of which affidavit with the Clerk, he will lay a rule on the person in possession to show cause, within the first four days of the term succeeding the term to which the process of Execution was returnable, why the Writ of Habere Facias Possessionem should not issue; and should the said rule be served upon the party in possession twenty days before the first day of the term next succeeding the term to which the process of Execution was returnable, and should no cause be shown within the first four days of such succeeding term, the purchaser may take his Writ as a matter of course, and no cause will be permitted to be shown after the lapse of the said four days.

RULE 34. (In relation to taking Testimony under the Act of 1828, Chapter 165.) There shall be notice given to the adverse party, or his attorney, ten days prior to the time of taking the same, unless in the cases hereinafter enumerated.

The said notice shall be delivered personally to the adverse party, or his attorney, if either of them reside at the Capital of the County where the case is depending.

If the adverse party or his Counsel reside in the State but not in the place of holding the Circuit Court in which the action is

depending, then a written notice, subscribed by the party who wishes to take the testimony, or his attorney, shall be filed with the clerk of the said Circuit Court, who shall enclose a copy thereof ten days prior to the day appointed for taking the testimony, to the person to whom it is addressed, directed to such post office as shall be named in the written notice filed; and the Commissioner shall require satisfactory proof that the post office named is the proper and usual post office of such person, and such notice so sent by mail shall be deemed, when proved before the Commissioner or Commissioners, sufficient in such cases.

If the party and his attorney reside out of the State, then a written notice, subscribed aforesaid, and left with the Clerk of the Circuit Court where the action is depending, shall be by the Clerk caused to be published fifteen days prior to the day appointed for the taking the depositions, in some newspaper published in Cecil County, if one be published in said County, if not, some newspaper having general circulation published in the City of Baltimore.

Where it shall be made appear to the satisfaction of the Commissioner or Commissioners, by affidavit of the party, his agent or attorney, that his witness or witnesses are sick and not likely to live, or may be about to march out of the State in the public service as a soldier or militia man, it shall and may be lawful to take the deposition or depositions of such witness or witnesses on giving such notice less the ten days, as the said Commissioner or Commissioners may think reasonable, all circumstances considered, so that the party interested, his agent or attorney, may have convenient time to attend; and the Commissioner or Commissioners shall and he or they are required to give the party, or his agent or attorney, a certificate of having made affidavit, and of the number of days appointed for notice, which shall be lodged with the Depositions, and such certificate shall be taken as good evidence of the truth of the facts therein contained.

#### RULE 35

This 13th day of April, 1860.

Ordered that in all cases where negroes free or slave shall be sold under the 30th Article, Sections 188 and 189 of the Code the matter shall be referred to the Auditor to state an account between the sheriff and the fund arising from the proceeds of sale, and the said Auditor shall give three weeks previous notice inserted in some newspaper published in Cecil County warning all persons having claims against said fund to file them with him before the day fixed for stating said account.

Signed

John H. Price



## RULE 36

December Term, 1870.

Ordered, this 11th day of January, A. D. 1871, that in the trial of all Criminal Cases not more than two Counsel shall be allowed to address the jury in behalf of the State of defence; and in all cases, other than homicide, only one hour shall be allowed to each of the Counsel for the State and defence. If one Counsel only addresses the jury of the part of the defence he shall be allowed one hour and a half, except in cases in which the punishment is fine and imprisonment in the Jail, in which fifteen minutes shall be allowed the State in each the opening and closing and twenty minutes for the argument on the part of the defence.

In the trial of all Civil Cases other than Appeals from Justices of the Peace not more than two counsel shall be allowed to address the jury in behalf of the Plaintiff or Defendant, and only one hour shall be allowed to each of the Counsel for argument before the Jury. If only one Counsel shall address the jury on the part of the Defendant, he shall be allowed one hour and a half.

The Court reserves to itself the right in special cases, of which it shall be the judge, to extend the time herein allotted, to the respective counsel.

In Appeal Cases fifteen minutes shall be allowed to the counsel for the plaintiff in each the opening and closing argument; and twenty minutes to the counsel for the defendant; and if more than one counsel for the defendant they can apportion the time between them.

December Term, 1870.

Signed  
Jos. A. Wickes  
Frederick Stump

## RULE 37

Ordered by the Circuit Court for Cecil County that all petitions for naturalization made and filed in this Court under the provisions of the Act of Congress approved June 29th, 1906, entitled "An Act to establish a Bureau of Immigration and Naturalization and to provide for a uniform rule for the naturalization of aliens throughout the United States", shall stand for hearing and final action on the first day of the June term in each year, and on the second day of the March, September and December terms in each year.

September 21st, 1906.

Signed  
James A. Pearce  
Austin L. Crothers

### RULE 38

Ordered by the Circuit Court for Cecil County, that if no application for a commission to take testimony be made under Sec. 16 of Art. 35 of the Code of Public General Laws of 1904, and no depositions be taken under Sec. 17 of Art. 35 of the Code of Public General Laws of 1904, on or before the first day of the second term after process has been served on the defendant, then no continuance shall be granted on application for such commission after said date, unless by consent of parties, or upon good cause shown, as provided in Sec. 58 of Art. 75 of the Code of Public General Laws of 1908. This rule not to apply in cases where no nar has been filed on or before the first day of the second term.

March 13th, 1908.

Signed  
James A. Pearce  
W. H. Adkins  
Philemon B. Hopper

### RULE 39

Hereafter motions for special assignments may be made at the conclusion of the first call of the trial docket, but no day for the trial of a case removed into this Court from any other Court shall be named until a reasonable estimated time has been allowed for the disposal of all local cases marked for trial and no preferences shall be given in the trial of local cases to any such case because the parties or witnesses are non-residents except by unanimous consent of the members of the Bar appearing in unassigned cases marked for trial and present in Court at the time fixed for making special assignments. All assigned cases shall await the disposition of unassigned cases on the peremptory call of the trial docket except by the consent, during or at the close of the second call of the docket, of all members of the Bar having unassigned cases marked for trial and present in Court at said second call of the trial docket.

September 21, 1911.

Signed  
James A. Pearce  
W. H. Adkins  
Philemon B. Hopper

Centerville, Md.  
Feb. 3, 1906

My dear Major:

The section of the Code about witnesses is Sec. 11 of Art. 35 of the New Code. I should say that the thirty days should be computed from the discharge of the witnesses in the case, or from his own (the witness') discharge, if he is discharged before the rest of the witnesses, and if there is no special discharge made and

announced, then from the continuance of the case, which of itself works a discharge, or the trial of the case, which does the same. I hope I have made myself understood.

Yours very truly,  
(Signed) Edwin H. Brown

#### RULE 40

Ordered this 22nd day of November, 1932, by the Circuit Court for Cecil County, that in all cases where a motion has been made by the defendant or defendants, to strike out a judgment extended in favor of the plaintiff against the defendant, or defendants, for want of a plea during the term at which such judgment was entered, said motion shall be accompanied by the affidavit of the defendant, or defendants, or some one on his, her, their or its behalf who is familiar with the facts, that said motion is not intended for delay, that the defendant, or defendants, has a meritorious defense to the plaintiff's claim and shall set forth the grounds of defense.

And that the defendant, or defendants, shall pay all the costs taxed to the plaintiff up to the time of filing said motion. Said costs to be paid to the Clerk of the Court within four days from the filing of said motion and not to abide by the result of the suit.

Signed            Wm. H. Adkins  
                    Lewin W. Wickes  
                    Thomas J. Keating

**RULE AS TO BILL OF PARTICULARS AND THE RULE DAY  
FOR FILING PLEAS IN ABATEMENT THEREAFTER.**

**RULE NO. 41**

Where the Defendant desires to make a demand for a Bill of Particulars of Plaintiff's claim, such demand must be made at the call of the docket at the Appearance Term or within fifteen days thereafter, where the declaration has been filed at the time of instituting the suit; and where the declaration has not been so filed, then within fifteen days from the filing of the declaration has not been so filed, then within fifteen days from the filing of the declaration; and if the demand is granted, the bill of particulars shall be filed within thirty days from the granting of the demand, unless the time for filing the same be extended by the Court.

And whenever such demand is made and granted, the rule day for filing a plea of limitation or any plea in abatement shall be extended until fifteen days after notice served upon the defendant, or his counsel of record, by the plaintiff of the filing of the bill of particulars; and if exceptions be filed to the bill of particulars, said rule day shall be extended until a bill of particulars has been approved or a demand therefor disallowed by the Court, and notice thereof served upon the defendant, or his counsel of record, by the Plaintiff.

Ordered this Twenty-seventh day of September, 1934, by the Circuit Court for Cecil County, that the foregoing rule be and the same is hereby adopted as a rule of this Court.

Signed	Wm. H. Adkins
	Thomas J. Keating
	J. Owen Knotts

RULES  
of the  
CIRCUIT COURT  
for  
CECIL COUNTY,  
MARYLAND  
EQUITY

RULE 1. Return Day.—The first day of each term shall be the return day for equity process.

RULE 2. Bill and Petition to be Filed.—No bill or petition shall be laid before the Court until it shall have been duly filed by the clerk.

RULE 3. Papers in Proper Person.—Any bill or petition, or writing filed and addressed to the court, certified by a judge or justice to have been acknowledged before him by the person whose name is subscribed thereto, the judge or justice stating in the certificate that such person is known to him, shall have the same effect as if signed and filed by a solicitor of the court, or as if delivered by the person to be filed.

RULE 4. Exhibits to be Filed.—No attachment shall issue against any defendant to answer a bill or petition nor shall any injunction be granted until all the papers referred to as exhibits with the bill or petition, and made part thereof, shall be filed.

RULE 5. Withdrawal of Exhibits.—A complainant or defendant, upon giving his receipt to the clerk for the same, may obtain any exhibits filed and referred to in the bill or petition, or answer, if the complainant or defendant shall require the same for the purpose of proving them under a commission issued to take testimony in the cause, or in any other mode prescribed in the case.

RULE 6. Commissions to take Testimony.—Commissions issued for taking testimony within the United States shall be returned within three months from the day of their date, unless the distance shall exceed five hundred miles by the usual mail route; and in that case six months; and if not so returned, a rule or order may be obtained for the return thereof by such day as shall be limited, or on application such commission shall be declared void, and a new commission shall issue or other order passed in the premises as may appear proper; **provided** that when such commission shall not be so returned, it shall prima facie be considered the fault of the party who had the carriage of such commission. When a commission shall not be issued within fifteen days from the date of the order or agreement for the same, the complainant shall be subject to the rule for further proceedings. Other commissions for taking testimony shall be subject to the special order of the court in the particular cases.

RULE 7. Auditor's Report.—When any report of the auditor shall have been filed and lain in court from the Wednesday preceding the first day of each and every term, the Court will, on application, act on the same, on and after said first day of each term.

January 17, 1929.

To the Members of the Bar of Cecil County,  
Gentlemen:

Section 26, Article 17 of the Code of P. G. L. of Maryland provides that whenever in any Cause in a Court of Equity any real or leasehold estate is sold and the proceedings are by law proper to be recorded among the Court records, the costs accruing in such Cause shall be paid before final ratification of the first auditor's account after such sale.

The requirement of the above statute will, hereafter, be strictly enforced and no audit coming within its provisions will be ratified unless accompanied by a Certificate of the Clerk of the Court stating that the taxed costs have been paid.

Yours very truly,

LEWIN W. WICKES.

**RULE 8. Decrees of Partition and Dower.**—No final decree of partition, or of dower, shall be made on the report of commissioners, unless such report shall have been filed and shall have laid in court during the first four days of a term, or unless the parties shall have certified in writing their approbation of the report; **provided**, however, that at any time after filing such report, any party may obtain an order for ratifying it, unless cause be shown at such time, and on such notice as may be directed.

**RULE 9. Decree on Award.**—On motion or application, a decree will be passed upon any final award rendered by the referees appointed by the rule of the court, and with the consent of parties; **provided** such award shall be filed and docketed, and shall have lain in court the first four days of a term, and that no exception shall have been made thereto; or, **provided**, a copy of the award filed and docketed shall have been served on the opposite party, or his solicitor, at least ten days before such motion or application, and that no exception shall have been filed to the award.

**RULE 10. Hearing.**—Causes set down for hearing, and motions for dissolving injunctions, will be taken up on application of either party, and without regard to their numerical order on the docket. The court will hear the argument or receive notes of either party, or his solicitor, at any time during the term, and if the opposite party, or his solicitor, shall not offer his argument or notes before the close of the term, the court will proceed to decide the cause, as if both parties had been heard; **provided** such opposite party, or his solicitor, shall, before the close of the term, have been notified that the argument or notes aforesaid, have been offered. On a case being argued as aforesaid by one party alone, the clerk shall place on the outside of the bundle of the papers in the case a memorandum of the day and side on which the case was argued or notes filed; and at the close of the term, the clerk shall deliver to the court the papers in all cases so argued, in order to the determination thereof.

**RULE 11. Attachments.**—In cases where attachments are issued, the further process thereon must be required before the commencement of the term next after the return of such attachment, otherwise the party must resort to a new attachment.

**RULE 12.—Abatement; New Parties.**—Under article 16 of the code of public general laws, the proof of the right of the applicant, executor or administrator to appear, shall be an exemplification of the letters testamentary, or of administration, or an affidavit of the death of the party, and the heirship (where the heirs are applicants); and in addition to the affidavit of death of the party, devisees applying shall exhibit a certified copy of the will under which they claim. The court will order notice to be served on the opposite party of the admission of the personal representatives, or heirs, or devisees as parties, but such notice shall consist only in the copy of the order nisi admitting the said parties. In such order the opposite party shall be allowed four days after service to show cause against the admission.

**RULE 13. Hearing—Absence of Counsel.**—The absence of counsel, (except in cases of sickness), or of a party appearing without counsel, shall not be considered as a ground of continuance or of postponement; and when two or more solicitors appear for any party, the attendance of one solicitor, or his ability to attend, shall be sufficient to prevent a continuance or postponement on account of the absence for any cause whatever of the other solicitor.

**RULE 14. Service of Rules and Orders.**—No party, or his solicitor, shall be bound to take notice of any rule or order made and docketed, either in term or during vacation, relative to any suit or proceeding, unless a copy of such rule or order be served on the said party, or his solicitor, within four days after the passing or entering of such rule or order, or as shall be by the court specially directed. This not to apply to non-resident defendants, or defendants who are in default for want of appearance.

**RULE 15. Submission of Causes.**—In trial causes which may be submitted, the party submitting shall lodge in court notes or an abstract in each case of the object of the bill and a summary of the evidence, and the grounds of law and fact on which he relies, on or before the second day of the term, and shall on or before the third day of the term, give notice to the opposite party, or his solicitor, of the submission of such cause.

**RULE 16. Testimony.**—On any application for continuance for want of testimony, or any other cause, or on application to open or remand a commission, or to have a new commission issued for the purpose of taking further testimony, the opposite party may require proof by affidavit or otherwise of the nature of the testimony wanted, and the reasons which may have prevented its being produced in time.



**RULE 17. Appearance and Answer.**—A party who has been summoned shall have until the fourth day of the term to which summoned to appear, and on failure to appear by the said fourth day, shall be deemed in default. A party appearing shall have until the fourth day of the next succeeding term to answer, and on failure to answer by the said fourth day, shall be deemed in default, and rules for pleading and further proceedings shall regularly be by the fourth day of the term next succeeding that at which the rule is laid.

This Rule superceded by New General Equity Rules Nos. 11 and 15.

**RULE 18. Abatement and Revivor.**—On the suggestion of the death of a party which would abate the suit, the same is to be entered abated, and not brought forward or continued on the docket under "leave to file bill of revivor," unless the party suggesting the death or some other party take further proceedings, either by bill of revivor or under article 16 of the code of public general laws by the fourth day of the term next after that at which the suggestion shall be made.

**RULE 19. Motion to Dissolve.**—On motions to dissolve injunctions, if the complainant shall not argue the same on the day assigned for hearing, the opposite may argue it orally, or by notes, on that day or submit it to the court, which shall thereupon proceed to determine the said motion.

**RULE 20. Motion to Dissolve.**—When an answer shall be filed to an injunction bill admitting the equity thereof, and praying a dissolution of the injunction as to a part of the enjoined judgment not affected thereby, a motion for such dissolution will be heard at the term next after filing the answer, without notice to the opposite party of such motion.

**RULE 21. Order Nisi on Report of Sale.**—No sale of real property under a decree or order of this court shall be absolutely ratified and confirmed until public notice of the report of such sale shall have been inserted once a week for one month in some newspaper published in Cecil County one month previous to such confirmation; such sales may however be confirmed by consent in writing, without notice, where there are no infant parties to the cause.

**RULE 22. Trustee.**—No person but an officer of this court shall be a trustee to make sale under any decree or order of this court, unless the court shall for special reasons dispense with this rule.

RULE 23. Commissions to Trustees.—On sales under decrees or orders of this court, the following allowances shall be made to trustees:

On the first	\$500, 7%
On the second	" 6½%
On the third	" 6%
On the fourth	" 5%
On the fifth	" 4½%
On the sixth	" 4%

or

\$ 500	\$ 35.00
1000	67.50
1500	97.50
2000	122.50
2500	145.00
3000	165.00

Then 4% or \$40.00 per \$1000.00.

The last table not in the rules.

and four per centum on all amounts above the \$3000, above allowed, besides the allowance for expenses not personal. The above allowance to be increased in cases of postponed sales at the request of defendants, or extraordinary difficulty, or trouble from other circumstances.

Where there is no sale, as for instance, where the defendant pays under the decree, and the trustee has bonded, the allowance shall be one half the commissions hereinbefore prescribed, but may in particular cases be increased or diminished by special order of the court.

RULE 24. Solicitor's Fee.—The auditor shall allow in each case where a decree or order for sale is passed a fee of thirty dollars to the complaint's solicitor, and where the defendant appears by solicitor, the usual solicitor's fee shall be allowed out of the proceeds of sale.

(The first provision of this rule was held to be void in *McCullough v. Pierce*, 55 Md. 540, 545.)

RULE 25. Allowance in Lieu of Dower.—The allowance to a widow in lieu of her right of dower in land sold under decree shall be as follows—having due regard to her health and condition:

If she be under 40 years,-----not more than 1/7

If above 40 and under 45,-----not more than 2/15

If above 45 and under 51'-----not more than 1/8

If above 51 and under 56,-----not more than 1/9.

If above 56,-----not less than 1/10.

RULE 26. Allowance to Tenant by Courtesy.—The allowance to a healthy tenant by the courtesy in land sold under decrees shall be as follows:

If under 30 years of age,-----not more than 3/8  
If above 30 and under 40 years,-----not more than 5/16  
If above 40 and under 50 years,-----not more than 3/16  
If above 50 and under 60 years,-----not more than 2/16  
If above 60,-----not more than 1/9.

RULE 27. Answer—Further proceedings.—On an answer being filed it shall be the duty of the clerk to make a copy for the opposite party. The complainant shall have two weeks after notice served on him of the answers having been filed to except to the answer; after which time the complainant shall be subject to the rule for further proceedings.

RULE 28. Demurrer and Plea.—The complainant may set down the demurrer or plea to be argued, or he may take issue on the plea. If a plea or demurrer be overruled no other plea or demurrer shall be received, but the defendant shall proceed to answer the bill, and if he fail to do so within the time prescribed by the court upon overruling the plea or demurrer, the bill, or so much thereof as was covered by the plea or demurrer, may be taken for confessed and the matter thereof decreed accordingly.

RULE 29. Amendment of Bill.—If the defendant's answer be excepted to as insufficient, and the defendant submit to answer further, or the answer be adjudged insufficient, the complainant may amend the bill by leave of the Court without costs, and the defendant shall answer the amended bill and exceptions together.

RULE 30. Amendment of Bill.—If the defendant demur to a bill for any defect not embracing the equity of the whole bill, the complainant may amend with leave of the court at any time before or at the argument of the demurrer, upon payment of costs, at the discretion of the court.

RULE 31. Demurrer, Plea and Answer.—The defendant may at any time before the bill is taken *pro confesso*, or afterwards with leave of the court, demur or plead to the whole bill, or part of it; and he may demur to part, plead to part, and answer to the residue; but in any case in which the bill charges fraud, or fraudulent actings, or combination, a plea to such part of a bill, or to such bill, must be accompanied with an answer fortifying the plea and explicitly denying the fraud and combination and the fact on which the charge is founded.

RULE 32. Answer to Cross-Bill.—When a cross bill shall be filed, the defendant or defendants to the first bill shall answer thereto before the defendant or defendants to the cross bill shall be compelled to answer such cross bill.

RULE 33. Testimony of Aged Witnesses, etc.—Upon any bill filed, and before the defendant has answered, upon oath made, that any of the complainant's or defendant's witnesses are aged, or infirm, or going out of the state, or that any one of them is a single witness to a material fact, the clerk may issue a commission to the standing commissioners for taking the examination of such witness or witnesses—the party praying such commission giving such notice as the commissioners shall deem reasonable to the adverse party of the time and place of taking the depositions.

RULE 34. Answer Sworn to out of State.—An answer sworn to out of the State will be received, if sworn to before any officer who may, by the laws of this State, take the acknowledgment of a deed in the place where sworn to, and certified in like manner.

RULE 35. Affidavit that defendant is Heir-at-Law.—Under the provisions of article 16, section 88, 95, 96, 97, 98 of the code of public general laws, and affidavit of a disinterested person will be required, that the defendant appearing is heir-at-law, before final decree will be made.

RULE 36. Affidavit of Non-Residence.—An affidavit of non-residence will be required before any decree will be passed against a non-resident not appearing.

RULE 37. Hearing.—When a commission and testimony under it shall be returned, the cause may, after the commission and testimony shall have lain in court ten days, be set down for hearing forthwith, or at the term ensuing the expiration of said ten days, if that shall be in vacation.

RULE 38. Auditor's Proceedings.—When a matter shall be referred to the auditor, to examine and report thereon, he shall assign a day and place therefor, and give reasonable notice to the parties, or their solicitors; and if either party shall fail to attend at the time and place, the auditor may adjourn the examination to some future day, and must give notice thereof to the parties, or their solicitors; and on their failure to attend he shall proceed *ex parte* to examine the matter and report to the court. This rule not to apply to cases in which the defendants have failed to appear in person or by solicitor.

RULE 39. Petition for Re-Hearing. Every petition for a re-hearing shall contain the special matter or cause on which such re-hearing is applied for, shall be signed by the counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party, or some other person. No re-hearing shall be granted after the fourth day of the term next after that when the decree shall be signed.

**RULE 40. Enforcing Delivery of Possession.**—If a defendant, or tenant, or other person, coming in **pendente lite**, refuse to deliver possession of property sold under decree or order of the court, upon affidavit made of the fact, the court will issue an order directing possession to be given to the purchaser forthwith, unless cause shown by a certain day to be limited in said order, and on refusal or neglect to comply with said order, a writ in the nature of a writ of **Habere Facias possessionem** shall forthwith be issued by the clerk.

**RULE 41. Receipts to Trustees.**—Original receipts and acquittances given to trustees, and lodged for record in the clerk's office, shall be returned to the trustee after they shall have been recorded.

**RULE 42. Ne-Exeat.**—A **ne-exeat** shall be by special order dissolved upon the defendant's filing a bond executed by himself, and a surety or sureties approved by the court, in such penalty as the court shall direct—conditioned that “in case the complainant shall obtain a decree in his favor, fulfill and perform the said decree, or render his body to the sheriff, to whom any writ of attachment shall be directed, for compelling the defendant's performance of said decree.”

**RULE 43. Payment of Money into Court.**—A trustee, under a decree or order for sale, may pay money into court without any special order, and shall at the time of such payment give to the clerk a statement of the amount, and on what account paid in, and the clerk shall receipt for the same on a duplicate of such statement. All sums so paid in shall be deposited by the clerk in some bank to the credit of the cause in which paid in, and shall only be drawn out on the special order of the court.

In all other cases a special order shall be required to authorize the payment of money into court.

**RULE 44. Audits in Trust Estates.**—The auditor, in stating audits in trust estates, shall not allow any claim upon the trust fund that is at the time it is presented for audit, or which appears to have been at any time previous thereto, marked or transferred to the use of the trustee in said cause, until the amount actually paid for said claim by said trustee shall have been established by legal and competent evidence; and he shall then only allow said trustee, or any person claiming under him, the amount actually and bona fide paid therefor by said trustee (with interest at six per cent thereon, if it is a claim upon which interest is properly allowable); and he shall audit to the cestuis que trust, who would have been entitled to receive the money if no transfer of the claim had been made, the difference between the gross amount of the claim and the sum so paid by the trustee.

**RULE 45. Taking Testimony.**—The commissioners on the equity side of this court, in all cases where testimony is taken, shall copy and insert the interrogatories immediately preceding the answers of the witnesses.

**RULE 46. Order nisi on Sale of Personal Property.**—When personal property is sold by a mortgagee, or other person, under a power of sale contained in a mortgage, or by a trustee, under a deed of trust, or decree of this court, and the sale thereof is reported to this court, an order nisi shall be passed and inserted in some newspaper printed and published in Cecil County, once in each of two successive weeks, giving notice that the said sale will be ratified unless good cause to the contrary be shown within one month from the date of the first publication of said notice. This rule not to apply when the sales of real estate and personal property are included in the same report.

**RULE 47. Testimony before Examiner.**—Whenever any cause is at issue involving matter of fact, or whenever any evidence is required to be taken to be used in any proceeding in Equity, either party desiring to take evidence may do so by first notifying one of the regular Examiners, or any Special Examiner that may be appointed, of such desire, and the Examiner shall proceed to take such testimony in the manner provided by Rule 37 of the General Rules for the Regulation of the Pleading and practice in Courts of Equity.

**RULE 48. Order Nisi on Auditor's Report.** Whenever a report of the Auditor is filed, an order of ratification nisi shall be passed by the Clerk and inserted once in each of two successive weeks in some newspaper printed in Cecil County, giving notice that said report will be finally ratified unless good cause to the contrary be shown within three weeks from the date of the first publication of said notice, which may be any time after the filing of said report. It is further ordered that the cost of said publication shall be allowed in the audit. This rule to take effect after the first Monday in May, 1908.

**RULE 49. Argument of Counsel.**—At the argument of Chancery Causes not more than two Counsel for plaintiffs and two for defendants will be permitted to address the Court; plaintiff's attorneys will be allowed one hour for the opening argument and one for the closing; the defendant's attorneys will be allowed one hour apiece, but if only one speak he will be allowed one hour and a half, and the plaintiff shall have but a half hour to reply and close.

## EQUITY RULES AS TO MORTGAGES.

When a sale is made, under a power contained in the mortgage, during the life time of the Mortgagor, and the proceeds arising from such sale are more than sufficient to pay the mortgage debt, interest and all costs, fees, commissions and expenses incident to the sale and provided for by the mortgage, any junior judgment creditor, lienor, or assignee, of the Mortgagor, or "any person claiming an interest in the equity of redemption," may file a petition in the case, at any time after the sale has been reported and before the proceeds have been finally distributed, to have the surplus proceeds of such sale or so much thereof as may be necessary, applied to the payment of his claim. Upon such petition an order will be passed by the Court referring the proceedings to the Auditor and directing him to give notice, by publication, in manner prescribed by the order, to such judgment creditors, lienors, assignees and "persons claiming an interest in the equity of redemption" to file their claims, with the vouchers thereof, with him on or before a certain day (which shall be sixty days from date of first publication) named in the notice, and authorizing him to take such testimony as he may find necessary to establish said claims, and to state, and return to the Court an audit distributing such surplus proceeds to said claimants, as their rights may appear.

When a sale of realty is made, under a power containing in a mortgage, after the death of the mortgagor, and the proceeds arising from such sale are more than sufficient to pay the mortgage debt, interest and all costs, fees, commissions and expenses incident to the sale and provided for by the mortgage, any creditor who would be entitled to have the real estate of the deceased mortgagor sold to pay his claim, may intervene in the foreclosure proceedings by petition, in the nature of a creditor's bill, on behalf of himself and other creditors who may come in and contribute to the expenses, to have the surplus proceeds of such sale applied to the payment of the debts of the deceased Mortgagor, in so far as may be necessary; which petition shall contain, briefly stated, the allegations necessary in a creditor's bill, and giving the names, ages and residences of the widow and heirs at law, or devisees, of the deceased mortgagor, and praying for the relief sought. Whereupon the Court will pass orders thereon, as follows:

If the widow and all the heirs at law, or devisees, be residents of Maryland, Orders 1 and 2 will be passed.

1.

Ordered this       day of 19       , by the Circuit Court for Cecil County, in Equity, and by the authority of said Court, that       , the widow and heirs at law (or devisee) of       , be, and they are hereby warned to appear and answer the foregoing petition on or before the       day of       next; by service of a copy of said petition and of this order on them on or before the day of       next. (If it be less expensive to bring the parties in by subpoenas, they will be substituted for service of copy of petition and order.)

2.

#### Notice to Creditors.

Title of case.

Ordered this day       of 19       , by the Circuit Court for Cecil County, in Equity, and by the authority of said Court, that the creditors of       late of Cecil County, deceased, and all persons who may be entitled to participate in the distribution of the surplus proceeds of sale remaining after satisfying the mortgage under which the real estate of       , deceased, was sold, be, and are hereby, notified to file their claims with the Clerk of the Circuit Court for Cecil County, on or before the       day of       next (sixty days from date of first publication): provided a copy of this order be published in some weekly newspaper printed and published in Cecil County, Maryland, once in each of three successive weeks before the       day of       19       . (In case where widow and heirs at law (or devisees) or any of them, are non-residents of Maryland, Orders 1 and 3 will be passed; if all are non-residents Order 3 will be passed.)



3.

Order of Publication and Notice to  
Creditors.

A. :  
vs. : In the Circuit Court for Cecil County, in Equity  
B. :

The object of this suit is to have the surplus proceeds of sale under a mortgage applied to pay creditors of late of County, Mortgagor.

The Bill states that said died, before the sale under the mortgage, indebted unto in \$ on note (or otherwise), and to others, leaving personal property insufficient to pay his debts, upon which administration was granted to : that the land sold for more than enough to satisfy mortgage and his creditors are entitled to the surplus proceeds; that left surviving him and now living, A. widow, B. and C., infant children, all residing in Maryland, and D. infant, and E. Adult, children who are non-residents of Maryland.

Ordered this day of 19 , by the Court, that the creditors of deceased, file their claims, with vouchers, with the Clerk of this Court on or before the day of next, or be excluded from participation in the distribution of said surplus proceeds of sale:

Ordered, further, that notice of the object and purpose of said petition be given to D. E., non-residents, by publishing this order in some weekly newspaper published in Cecil County once in each of four successive weeks before the day of 19 , and warning them to appear in this Court in person or by attorney, on or before the day of 19 , to show cause, if any they have, why the petition should not be granted. (The usual time for appearance, under publication, allowed.)

If no answers be filed the Court will refer (without further process) the petition and proceedings to the auditor to state and report, for action of the Court, an audit distributing the surplus proceeds to those entitled to receive it and with authority to take testimony to establish the allegations in the petition and to determine the rights of all parties claiming, or interested, in said surplus.

When the sale is made after the death of Mortgagor and the surplus proceeds be not required to pay debts, any one or more of the heirs, devisees, or the widow, of mortgagor, may file a petition for the distribution of such surplus to those entitled, giving the names, ages, residences and relationship of all of the parties entitled to participate, verified by the oath of the petitioner and the oath of, at least, one disinterested person who is acquainted with the parties and facts. Whereupon the Court will refer the proceedings to the Auditor to state and report an audit distributing the surplus to those shown to be entitled to it, with authority to take testimony, if found necessary.

No sale made by virtue of a power in a mortgage will be finally ratified and confirmed until after a statement of the mortgage debt and interest, verified by oath, shall be actually filed with the Clerk of the Court.

Above Rule adopted April 25, 1910.

James A. Pearce  
Wm. H. Adkins  
Philemon B. Hopper.